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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/663,914	09/18/2000	Adelmo Monsalve-Gonzalez	5346	4221

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EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 06/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/663,914

Applicant(s)

MONSALVE-GONZALEZ ET AL.

Examiner

Lien T Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 21-25, 27, 31-44, 46-58 and 60-73 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 60-63 is/are allowed.
- 6) ☒ Claim(s) 21-25, 27, 31-58, 64-73 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

Claims 72-73 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 72 is vague and indefinite because it is not clear if the bran is treated with paracetic acid after it is treated with hydrogen peroxide and ozone or the paracetic is used in place of one of the other two agents cited in claim 60.

Claim 73 is vague and indefinite. Claim 73 depends from claim 60 which already recites that the bran is treated with ozone after it is treated with hydrogen peroxide. Thus, it is not clear what is intended in claim 73 and it is not seen how this claim further limits claim 60.

Claims 21-25, 27, 31-58,64-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Devic ( 5,219601).

Devic discloses a process of bleaching plant materials. The materials can be brans of cereals. The material is bleached by suspending it in water and adding hydrogen peroxide in a proportion of 1-15% by weight relative to the weight of the dry plant. The bleaching step is carried out at a temperature of from 40-100 degree C for about 15 minutes to 5 hours. (see column 4). The Devic process also comprises the steps of filtering and washing the plant material suspension before the bleaching. The bleaching step includes adding an alkaline agent in an amount ranging from .2-5%. The alkaline solution can contain a hydrogen peroxide stabilizing agent such as sodium silicate, magnesia, pyrophosphate etc.. in an amount of not more than 1%. The alkaline solution can also contain one or more complexing or sequestering agents for

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metal ions. After the plant is bleached, the bleached plant material is filtered and washed. At the end of the bleaching step, the residual hydrogen peroxide is eliminated by treating with catalase. The bleaching time varies and typically ranges from 15 minutes to 5 hours. The bleached plant material can be dried according to conventional techniques. (see columns 2-5)

Devic does not disclose the L value, the properties, adding the bran to the type of foods claimed, the amount of bran added to the food product, the particle size and the alkaline agent in claims 69-70.

Devic discloses a bleached bran product that is obtained by treatment with alkaline aqueous hydrogen peroxide solution and also in the presence of a chelating agent. The Devic process is a wet bleaching process because the bran is suspended in water and the hydrogen peroxide and alkaline agent are added to the suspension. There is no disclosure of the plant material completely absorbing the aqueous solution. Since the Devic product is obtained by bleaching steps which are the same as claimed, the product obviously has the properties such as antioxidant activity, water absorption value, reducing the native flavor components as claimed. As to the different alkaline agent, it would have been obvious to use any alkaline substance as long as the required pH is obtained. Applicant has not shown anything unexpected or critical in the alkaline agent used. With respect to the L value, it would have been obvious to vary the degree of whiteness depending on the intended use of the product. For example, if the bleached bran is added to flour, it would be desirable to have a high degree of whiteness to match the color of the flour. However, if the

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bleached bran product is added to dough containing whole wheat flour, or dark color component such as brown sugar, then the whiteness of the product is not that critical. It would also have been obvious to add the bleached bran product to any foods when it is desirable to increase the fiber content of the products; this would have been an obvious matter of choice. As to the difference in the pressure, temperature and time now claimed in all independent claims and claims 64-67 and the processing parameters claimed in claims 43,46,55,57 the claims are directed to a product. Determination of patentability in "product-by-process claims" is based on the product itself. Such product is unpatentable if it is same as or obvious from product of prior art (see *In re Thorpe* 227 USPQ 964).

The change in the rejection of claim 58 is necessitated by amendment. Claim 58, as now amended, no longer requires a combination of bleaching agents.

Claims 60-63,72,73 are free of prior art because there is no teaching of a bleached bran product which is obtained by treating bran with a hydrogen peroxide solution and an aqueous alkaline solution in a wet bleaching process and then followed by an ozone treatment.

In the response filed 3/26/2004, applicant argues Devic teaches a process which is carried out at a temperature of from 40-100 degree C for about 15 minutes to 5 hours and does not contain each an every element of applicant's claimed invention. This argument is not found to be persuasive. The difference in the pressure, temperature and time is a difference in the processing parameters and applicant has not show that such difference results in a different product. The examiner maintains her position that

the properties such as water absorption value, antioxidant activity, reduction in native flavor components are obviously present in the Devic bran product because it is treated with a bleaching agent and a wet bleaching process that are the same as claimed. The difference in the processing time and temperature is not unobvious because applicant is only using higher temperature for a shorter period of time. In fact, this is a purpose of pressure heating because the use of pressure allows for the use of higher temperature; this, in effect, decreases the processing time. An evidence that the processing time and temperature does not lead to a different product is the disclosure on page 11 of applicant's specification. Page 11 discloses another heating parameter besides the one now claimed. It discloses the bran can also be heated for 20-60 minutes at a temperature of 80-90 degree when atmospheric pressure is used. When high pressure is not used, the time and temperature fall within the ranges disclosed by Devic. Since the Devic bran product is treated with the same bleaching agent in a wet bleaching process, it is obvious the properties claimed will also be found in the Devic product. If applicant contends that the Devic product does not have such properties, the burden of proof is shifted to applicant to show that the product does not have the properties claimed.

The argument directed at claim 58 will not be addressed because the Stanley reference is no longer used in the rejection of claim 58. Applicant amended the claim to recite a Markush group and Devic disclose one agent listed in the Markush group. Claim 58 no longer recites a combination of bleaching agent.

Applicant's arguments filed March 26, 2004 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Tuesday, Wednesday and Friday.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

June 7, 2004

  
LIEN TRAN  
PRIMARY EXAMINER

*Group 1700*

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